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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 217

WILMA E. ADDISON, ERNESTINE C. LYLES, EDGAR CAMPBELL, SALLIE BAKER AND LUTHER BLACK,

Petitioners,

vs.

HOLLY HILL FRUIT PRODUCTS, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

GEORGE PALMER GARRETT,
Counsel for Petitioners.

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vs.

HOLLY HILL FRUIT PRODUCTS, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO CIRCUIT COURT OF APPEALS.

To the Honorable Justices of the Supreme Court of the United States:

Wilma E. Addison, Ernestine C. Lyles, Edgar Campbell, Sallie Baker, and Luther Black, Petitioners, respectfully petition the Court for a writ of certiorari to review a decision of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause therein lately pending between Holly Hill Fruit Products, Inc., Appellant, and the said Petitioners, Appellees, wherein a judgment was rendered by said Circuit Court of Appeals on June 24, 1943,

reversing the judgment of the District Court, and in support of their said petition, petitioners (plaintiffs in the District Court) respectfully show:

A.

The matter in controversy in this cause turns upon the minimum wage and maximum hour requirements of the Fair Labor Standards Act (29 U. S. Code Annotated, Sections 201 *et seq.*, 52 U. S. Statutes 1060 *et seq.*), and more particularly Section 13 (a) 10, whereby there is excepted from the coverage of the Act "any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market * * *."

The District Court found that:

The defendant was engaged in canning fruit during the period from November 14, 1938, to May 26, 1939, and from November 16, 1939, to March 30, 1940 (R. 187), and that throughout said two seasonal periods of operation, defendant employed at its establishment in the town of Davenport, Polk County, Florida, in its citrus fruit canning operations and processes, more than two hundred "piece workers" (R. 187) and forty-seven "hour hands," (R. 213), that said town is a town of six hundred and fifty population according to the 15th United States Census, 1930, situated within four miles of an incorporated town, Haines City, in said County, which had a population of over three thousand persons according to both the 15th Census of 1930, and the 16th Census of 1940 (R. 187).

During the first of these two periods, by regulation promulgated October 20, 1938, the Administrator of the Wage and Hour Division of the Department of Labor de-

fined an individual as employed in the "area of production" if engaged in such work on a farm, and on agricultural or horticultural commodities produced exclusively on such farm, or if such commodities are obtained by the establishment where he is employed from farms in the immediate locality, and the number of employees in such establishment does not exceed seven (R. 187 and 188). This regulation remained in effect through April, 1939, when, following a series of administrative hearings, the Administrator added a paragraph to his said definition as follows: "(e) with respect to perishable or seasonable fresh fruits and vegetables, if he is engaged in handling, packing, storing, drying, preparing in their raw or natural state, or canning such products for market in an establishment which is located in the open country or in a rural community and which obtains all of its products from farms in its immediate locality. As used in this subsection (e) 'open country' or 'rural community' shall not include any city or town of 2,500 or greater population according to the 15th United States Census, 1930, and 'immediate locality' shall not include any distance of more than 10 miles" (R. 187-188).

On June 15, 1939, effective June 17, 1939, the Administrator again amended his definition aforesaid to provide that the individual shall be regarded as employed in the "area of production" (a) if he performs those operations on materials all of which come from farms in the general vicinity of the establishment where he is employed and the number of employees engaged in those operations in that establishment does not exceed seven, or * * * (d) if he performs those operations on materials all of which come from farms in the immediate locality of the establishment where he is employed and the establishment is located in the open country or in a rural community. As used in this sub-section (d) "immediate locality" shall not include any distance of more than ten miles and "open country" or

"rural community" shall not include any city or town of 2,500 or greater population according to the 15th United States Census, 1940" (R. 188-189).

The District Court further found:

"VII. In and throughout the said two seasonal periods of operation, the establishment of the defendant did not obtain all of its agricultural and horticultural commodities or materials from farms in the 'immediate locality' or 'general vicinity' of the said establishment as defined by the Administrator. An appreciable portion thereof came from a distance beyond the range of usual farm travel. The general vicinity of defendant's establishment was not sparsely settled, there being several towns and communities within a radius of less than ten miles. Thus, considerable fruit was canned and processed in the defendant's establishment during said season which came from the neighborhood of Haines City, which is within four miles and has several commercial canning plants operating in competition to defendant's establishment. Also considerable fruit was canned and processed in the defendant's establishment during the seasons in controversy, coming from the neighborhood of communities as far away from Davenport as Lake Wales—20 miles—Babson Park, several miles more than 20, Dundee 14 miles, Loughman 7 or 8 miles. Much of this fruit was hauled past other canning factories to reach the defendant's establishment" (R. 192).

"VIII. In and during said two seasonal periods of operation, the establishment of the defendant is not located in the 'open country' or a 'rural community,' as defined by the Administrator in his said several definitions, because there was within the range of usual farm travel, at a point not more than four miles away, a town of more

than 2500 population according to the applicable United States Census" (R. 192-3).

"IX. There was practically no testimony showing the percentage of the fruit processed by the defendant establishment which was procured from groves located at a distance of more than ten miles by the shortest road haul from the establishment; almost all of the testimony on the distance of the point of origin of the commodities processed by said establishment during said two seasonal periods had reference to a ten mile radius, 'as the crow flies' " (R. 193).

"X. The evidence discloses that the defendant is not an establishment operated by the farmers raising the commodities processed, and that the processing is not done by the farmers through the use of their own farm labor on their own farms. On the contrary, although its membership consisted of fruit growers owning groves in two certain townships in Polk County, Florida, the defendant accepted a considerable portion of its commodities from groves of non-members and, in fact, processed many thousands of boxes of fruit delivered to the canning plant by a speculative non-member, the Grapefruit Distributors, Inc., a corporation. The employees of the defendant were not hired by the members, nor were they farm labor. On the contrary, they were hired by the defendant corporation and did no farm or agricultural labor. They were simply industrial employees. The defendant corporation was not itself engaged in agricultural or horticultural labor or work. It was a commercial industrial concern entitled to earn a reasonable profit from canning fruit" (R. 193).

The District Court concluded that the total exemption intended by Section 13 (a) (10) (29 U. S. C. A. Sec. 213 (a) (10), of the Fair Labor Standards Act of 1938) was inapplicable to the defendant (R. 194-197).

The Court of Appeals found it to be admitted that the wage and hour requirements of the Act were not observed (R. 225) but adopted the holding in the prior case of *Fleming* v. *Farmers Peanut Co.* (CCA5, 128 Fed. (2nd) 404), decided by the same Court of Appeals, that the limitation in the Administrator's definitions as to the number of employees was void (R. 226). The Court of Appeals held that: As to the period from November 14, 1938 to April 19, 1939, the evidence showed that 97.24% of the commodities came from farms located within 10 miles, 96/100 of 1% could not be traced, and the balance came from farms less than 25 miles distant, and that "it would be most unreasonable to say that the negligible quantity obtained from a slightly greater distance should affect the statutory concept of area of production" (R. 226). As to the period from April 30, 1939, to May 26, 1939, the Court of Appeals held that the evidence showed that "more than 97% of the commodities processed came from farms located within 10 miles of the plant. • • • The purchase of so great a portion within a ten mile radius of the plant, and the acquisition of the negligible balance from farms within 25 miles were sufficient to prove that the products were obtained within the immediate locality" (R. 226-7). And, as to the period from November 16, 1939, to March 30, 1940, the Court of Appeals held that the evidence showed that "during this period 91.39% of the fruit processed was purchased from farms within ten miles of the plant, and an additional 4% came from farms within twenty-five miles; and none was known to have come from any greater distance" (R. 227). Thereupon, the Court of Appeals held that: "In ordinary usage the words 'general vicinity' indicate a larger area than is meant by 'immediate locality' and a distance of 25 miles in this day of highly developed travel facilities is not beyond the range of usual farm travel" (R. 227). And, finally, "that these

appellees were employed within the area of production during the entire period involved here, and that the minimum wage and maximum hour provisions of the Act did not apply to them" (R. 228).

B.

1. Jurisdiction is invoked under Section 240 of the Judiciary Code, as amended by the Act of February 13, 1925, 43 Statutes 938, 28 U. S. C. A. Section 347.

2. The statute of the United States involved is the Fair Labor Standards Act of 1938 (29 U. S. C. A. Sections 201 et seq.; 52 U. S. Statutes 1060 et seq.) particularly Section 13 (a) (10) thereof, hereinbefore summarized in the first paragraph of this petition.

3. The judgment to be reviewed is dated June 24, A. D. 1943.

C.

The question presented is whether the Court of Appeals correctly held ineffective, in the circumstances set forth in the findings of the District Judge, the Administrator's said three definitions of "area of production."

D.

The said ruling and decision of the Court of Appeals is of such far-reaching extent as to call for a decision of this Court upon the question of federal law here involved. If the said ruling and decision of the Court of Appeals is suffered to stand and become a precedent, it will operate to the prejudice, not only of the petitioners, but of many other persons employed in the canning of fruits and vegetables.

Moreover, until the conflict and confusion is resolved in the seventeen decisions of the lower courts (all district

court decisions except the decisions of the Circuit Court of Appeals of the Fifth Circuit in the case of *Fleming* v. *Farmers Peanut Company* 128 Fed. (2d) 404, and in this present case, construing Section 13 (a) (10) of the Act and the Administrator's definitions of "area of production,") the Administrator cannot know the scope of his power, nor can the employers and employees intended to be included in, or excepted from, the Act know their respective duties and rights under the Act.

The decision of the Court of Appeals, without overruling the findings of fact made by the District Judge, determines the case contrary to these findings.

The decision of the Court of Appeals renders ineffective the definition of "area of production" promulgated by the Administrator although the Act of Congress expressly committed to him the power and duty to define the phrase. It disregards the spirit of the Act by exempting a whole industry from the coverage of the Act. It disregards the rule that the Administrator's regulation is presumed to be valid and based upon sufficient factual reasons. It disregards the intent of Congress as disclosed by the legislative history of the Act. It disregards the rule that exemptions from the scope of an Act of this type are to be strictly construed and exempts the defendant although the Court of Appeals concedes that the defendant is not literally within the exemption. It invalidates the Administrator's definitions which are essential to the claim of exemption and yet disregards the corollary that, if the definitions are invalid, there can be no exemption.

Prayer for Writ.

WHEREFORE, petitioners pray for a writ of certiorari to be issued under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, Louisiana, commanding that Court

to certify and send to this Court upon a day to be designated, a full and complete transcript of the record and all proceedings in the case entitled Holly Hill Fruit Products, Inc., Appellant, *v.* Wilma E. Addison, et al., Appellees, being Case No. 10643, in said Circuit Court of Appeals, to the end that this cause may be reviewed and determined by this Court, and that the decree of the Circuit Court of Appeals may be reversed, and the petitioners may be granted such other and further relief as may seem proper.

GEORGE PALMER GARRETT,
419 Exchange Building,
Orlando, Florida,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES

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No. 217

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HOLLY HILL FRUIT PRODUCTS, INC.,

Respondent.

PETITIONERS' BRIEF IN SUPPORT OF THEIR PETITION FOR WRIT OF CERTIORARI.

I.

The Opinion of the Court Below.

The opinion of the Circuit Court of Appeals for the Fifth Circuit was rendered on June 24, 1943, and is reported as *Holly Hill Fruit Products, Inc.* v. *Wilma E. Addison, et al.*, Case No. 10643 (C. C. A. 5th) — F. (2d) —, Advance Sheet No. — (not yet printed), Opinion by Holmes, Circuit Judge.

II.

Grounds on Which the Jurisdiction of This Court Is Invoked.

The decision of the Court of Appeals involves a novel and important problem and principle of federal law with regard to which the decisions of the lower courts are in conflict and confusion. This problem is the determination of the extent to which the Administrator of the Wage & Hour Division of the Department of Labor, acting under direct authority of Congress to define the phrase, "Area of Production", limiting an exemption from the coverage of the Act can, by his definition, reasonably depart from the dictionary meaning of the phrase in order to carry out the intent of Congress, as he determines that intent from the legislative history of the enactment and from hearings he has himself held to ascertain the proper practical scope of the phrase and the exemption. This case constitutes an important precedent for all District and Circuit Courts of Appeal in dealing with the extent and scope of the exemption granted by Section 13 (a) (10) of the Fair Labor Standards Act. The seventeen decisions by various lower federal courts, including two by the Circuit Court of Appeals for the 5th Circuit, on the validity and effect of the Administrator's definition of "area of production" are at this moment in utter conflict and confusion as to the effectiveness and scope of this exemption.

III.

Statement of the Case.

The petition to which this brief is attached sufficiently states all of the facts that are material to a consideration of the questions presented.

IV.

Specification of Errors Assigned.

There was no error in the District Court. We specify as error the decision of the Court of Appeals in reversing the District Court.

V.

ARGUMENT.

Question: Was the Court of Appeals in error in holding ineffective, in the circumstances set forth in the findings of the District Judge, the Administrator's definitions of "area of production"?

Petitioners conceive that the said ruling and decision of the Court of Appeals is erroneous, in this:

Said ruling and decision overlooks, or fails to give effect to, the essential purpose of the enactment as manifested in Section 2 of the Act: (b) "It is hereby declared to be the policy of this Act through the exercise by Congress of its power to regulate commerce among the several states, to correct and as rapidly as practicable to eliminate," etc., the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.

The whole Act is to be read together with the declared purpose in mind.

The thought back of the Administrator's definitions is admirably set forth in the preamble to the Administrator's first definition of the phrase "area of production", promulgated by him on October 20, 1938, under the authority given

him by Section 13 (a) (10) of the Act of Congress. This preamble reads as follows:

> "It appearing that the intent of Congress in making the special provisions relating to the 'area of production' was to prevent undue disturbance to agriculture and to exempt small businesses clearly related to agriculture to employ occasional workers in addition to members of employer's family without regard to the Wage and Hour Standards of the Act, and
>
> "It appearing that the exemption of only those businesses which employ a small number of workers would not result in material inequalities between firms doing the same type of business; and
>
> "It appearing that such small businesses are predominantly located in the 'open country' or 'rural communities', receive most of their raw products from neighboring farms, and frequently employ workers who spend part of their time in actual operations; and
>
> "It appearing that the exemption herein granted to such small businesses would not defeat the declared purpose of the Act, therefore, in view of the foregoing * * *."
>
> Vol. 3, Federal Register, Page 2536.

The basis for this preamble prefixed by the Administrator to his original definition of the phrase "area of production" is clearly given in the debates in Congress on the Act, the joint committee hearings, and the committee reports.

See, for example, Senate Report #884, 75th Congress, first session; C. R. July 27, 1937, pages 9895, 9904, 9906-7, 9910; C. R. July 30, 1937, pages 10179-81, 10191; C. R. July 31, 1937, pages 10246-7, 10267, 10276; C. R. December 17, 1937, page 2319; C. R. May 23, 1938, page 9626; C. R. May 24 and 25, 1938, pages 9741, 9746.

The debates may be considered. *Federal Trade Comm.* v. *Raladam Co.*, 283 U. S. 643, 650, 75 L. Ed. 1324; *Abram* v. *San Joaquin Cotton Oil Co.*, 49 Fed. Supp. 393 at 401.

Moreover, the said Congressional debates and reports disclose the essential intent of Congress in enacting the Act to include within its provisions all industrial workers and exclude agricultural workers.

That the Administrator's problem was deliberately cast upon him by Congress and he was left with full authority to promulgate a definition, reasonably conceived to carry out the intent of Congress even though it departed from the dictionary meaning of the phrase "area of production", is clear from the colloquy between Senator Black and Senator Schellenbach in the course of the debate on the bill, as follows:

Senator Black asked Senator Schellenbach what would be the definition of "area", would it not be possible to define it more clearly to get the effect. Senator Schellenbach answered, "I gave that considerable thought. I do not believe it is possible, and that is something that the Board (now the Administrator) which has been accused of receiving too much power, will have to decide. It would have to provide a definition of 'immediate production area'" (Congressional Record, July 30, 1937, p. 10181).

In resolving his definitions, the Administrator could well assume that the Act was constitutional. The Supreme Court has so held in the cases of:

Opp Cotton Mills v. *Administrator of the Wage and Hour Division of the Department of Labor*, 312 U. S. 126, 85 L. Ed. 624, and

United States v. *Darby*, 312 U. S. 100, 85 L. Ed. 609.

Likewise, he could well assume that the intent of the Act was to cover all industrial employees engaged in commerce.

Overstreet v. *North Shore Corporation*, — U. S. ——, 87 L. Ed. 423

and to except only those establishments coming strictly and literally within the exemptions of the Act.

He could fairly assume that the Act being a remedial one with a humanitarian end in view is entitled to a liberal construction. *Fleming* v. *Hawkeye Pearl Button Co.* (C. C. A. 8), 113 Fed. 2nd 52; *Bowie* v. *Gonzalez* (C. C. A. 1st), 117 Fed. 2nd 11; *Lofther* v. *1st Nat. Bank of Chicago*, 48 Fed. Supp. 692.

He could fairly assume that exemptions therefrom should be construed strictly. *Fleming* v. *Hawkeye Pearl Button Co. supra; Boyer* v. *Miller Hatcheries*, 42 Fed. Supp. 137; *Abram* v. *San Joaquin Cotton Oil Co.*, 46 Fed. Supp. 969.

A reading of the debates in Congress will demonstrate that the Administrator in defining the phrase properly exercised his judgment and discretion to advance the purpose in the mind of Congress when the Act was enacted.

A reading of the record of the Administrative hearings by his representative, Merle D. Vincent, to ascertain the factual basis for such definitions, and a reading of the findings of the said assistant show that the Administrator had a sufficient basis for using his Congressionally granted power to define the phrase "area of production" as he did.

The Administrator's definition as to number of employees is upheld in the Texas case of *Silgaro* v. *Port Compress Co.*, 45 Fed. Supp. 88.

The distinction between the Administrator's definitions and that of the Court of Appeals rests in the fact that the Court of Appeals has stuck to the dictionary meaning of the phrase and thereby defeated the intent of Congress, whereas the Administrator has given effect to the intent of Congress as he determined it to be.

The Supreme Court has long recognized that while Congress may not delegate legislative power to administrative agencies, Congress may declare its will, and, after fixing a primary standard, devolve upon administrative officers the power to fill the details by prescribing administrative rules and regulations allowing reasonable variations, tol-

erances and exemptions which, because of their variety and need for detailed statement, it was impracticable for Congress to prescribe. *United States* v. *Shreveport Grain & El. Co.*, (1932), 287 U. S. 77, 77 L. Ed. 177. A regulation by a department of government addressed to, and reasonably adapted to, the enforcement of an Act of Congress, the administration of which is confided to such department has the force and effect of law, if it be not in conflict with express statutory provision. *Maryland Casualty Co.* v. *United States*, (1920) 251 U. S. 342, 349, 64 L. Ed. 297. Had Congress itself defined "area of production" as did the Administrator in his regulations, the provision would unquestionably have been valid. Cf. *Tigner* v. *Texas*, (1940), 310 U. S. 141, 84 L. Ed. 1124.

The Congress reposed the controlling discretion as to the scope of the exemption in the Administrator. And where "a determination has been left to an administrative body, this delegation will be respected and the administrative conclusion left untouched." *Gray* v. *Powell*, 314 U. S. 402, 86 L. Ed. 301, (1941). It has long been held that where Congress has authorized a public officer to take some specified legislative action when in his judgment that action is necessary or appropriate to carry out the policy of Congress, the judgment of the officer as to the existence of the facts calling for that action is not subject to review. *United States* v. *Bush & Co.* (1940), 310 U. S. 371, 84 L. Ed. 1259. As stated by Mr. Justice Storey in *Martin* v. *Mott*, 12 Wheat. (U. S.) 31, 32, 6 L. Ed. 541; "Whenever a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction, that the statute constitutes him the sole and exclusive judge of the existence of those facts."

The Court of Appeals did not reverse the findings of the District Court. The findings of the District Court are clearly based upon sufficient facts to justify the same.

These findings of the District Court find the establishment to be of such character as that the establishment does not fall within the sphere of the exception granted by Section 13 (a) (10).

The Court of Appeals concedes that if the Administrator's definitions are to all respects valid and the exemption is strictly construed, the defendant's establishment is not within the exemption granted by Section 13 (a) (10) of the Act. It overlooks the rule that "those who set up any such exception must establish it as being within the words as well as within the reason thereof"; *U. S.* v. *Dickson*, 15 Pet. 141, 165, 10 L. Ed. 689.

Section 13 (a) (10) of the Act exempting "any individual employed within the area of production (as defined by the Administrator)" contemplates a definition by the Administrator not alone with respect to the meaning of the several words as ascertained by an inspection of the dictionary, but as fairly and reasonably understood in the light of the substantive provisions of the statute, and the declared purpose of the Act as set forth in Section 2 thereof.

It is significant that Section 3 of the Act contains no less than 13 definitions of the words employed in the statute. Yet, the phrase "area of production" is not among those defined. In leaving the definition of this term to the Administrator the Congress could only be contemplating that, in adapting its declared purpose to varying conditions arising, the Administrator would exercise a sound discretion reasonably adapted to the purpose of the Act. The Administrator's several amendments, of his original definition, referred to by the District Court, Record 187 to 192, inclusive, show a progressive effort on the part of the Administrator in this direction. Why should the Administrator be expressly empowered to define the phrase if the dictionary definition is to control?

It may not be presumed that the Administrative hearings referred to by the District Judge (R. 188) afforded no basis for the definitions promulgated by the Administrator's regulations. Fixing the number of employees at "not to exceed 7" has a direct bearing on the Congressional purpose of maintainjng the minimum standard of living deemed necessary. It also has a direct bearing on the intent of Congress (1) to mold the exemption so as to prevent the large scale farmer from securing a competitive advantage over the small scale producer, and (2) to enable small plants to compete with larger more industrialized plants performing similar operations and (3) to provide a wage differential between rural and urban areas and thereby aid the small farmer in marketing his goods.

In the light of this record it may not be justly said that the Administrative hearings afforded no basis for paragraph "E" of regulation 5362 whereby "'open country' or 'rural community' shall not include any city or town of 2,500 or greater population according to the 15th Census, 1930, and 'immediate locality' shall not include any distance of more than 10 miles" (R. 188). Obviously, as the District Judge held (R. 196) such a restriction does not contemplate that a town of greater population than 2500 shall lie within the area.

The opinion of the Court of Appeals stated that "in ordinary usage the words 'general vicinity' indicate a larger area than is meant by 'immediate locality' and a distance of 25 miles in this day of highly developed travel facilities is not beyond the range of usual farm travel" (R. 227). But the finding of the District Judge was that "an appreciable portion (of the commodities or materials processed) came from a distance beyond the range of usual farm travel" (R. 192). This was a finding of the facts presented in this controversy as to the particular circumstances and ought

not to have been overturned by the Court of Appeals by a conclusion of law as to what, country-wide, in general, is the usual range of farm travel.

In the above mentioned finding IX, the District Court found that there was practically no testimony in the record showing the percentage of the fruit processed by the defendant establishment which was procured from groves located at a distance of more than 10 miles by the shortest road haul from the establishment; almost all of the testimony on the distance of the point of origin of the commodities processed by said establishment during said two seasonal periods had reference to a ten mile radius, "as the crow flies" (R. 193). "Shortest road haul" is the only reasonable construction of the word "distance" in the clause of the Administrator's definitions that "immediate locality shall not include any distance of more than 10 miles." Yet, the Court of Appeals, treating the "distance" fixed by the regulation to be "as the crow flies", undertook to find specific percentages of these materials to have come from specific distances within or without a ten mile *radius* (R. 226 and 227).

The District Judge found that each of the Administrator's three definitions effective during the periods in controversy were in all respects valid (R. 194-5). The Court of Appeals cast aside the number factors in the several definitions (R. 226 and 227) and interpreted the Administrator's use of the word "all" to mean "substantially all", and by so doing, rendered ineffective that part of the Administrator's definitions requiring that *all* of the commodities processed must be obtained from the immediate locality or general vicinity of the establishment (R. 227).

We submit that the District Judge was right in measuring the exemption claimed by the Administrator's definitions.

If so, then, on the facts in the record, as reflected in the findings of fact made by the District Judge, he was also right in finding that the defendant's establishment is not exempt under Section 13 (a) (10).

However, if the Administrator's definitions are not valid, no exemption in favor of the defendant exists. On this point a California District Court says:

> "Assuming that the Administrator's definition of 'area of production' is wrong, they (speaking of the defendants) cannot claim exemption under it unless the Administrator redefines the phrase so as to exclude their establishment."
>
> *Redlands Foothill Groves* v. *Jacobs*, District Court, Southern District of California, Central Division, January 5, 1940, 30 Fed. Supp. 995 at 1006, second column. Opinion by Yankwich, Judge.

Conclusion.

We submit that the Administrator faithfully exercised his discretion and judgment in defining the phrase "area of production". His interpretation of this phrase is entitled to great weight.

U. S. v. *American Trucking Associations, Inc.* (1940), 310 U. S. 534.

Miller Hatcheries v. *Boyer*, (CCA 8th, 1942), 131 Fed. (2d) 283 at 286.

If the Administrator's several definitions are valid, the defendant's establishment does not come within the exemption granted by Section 13 (a) (10).

If the Administrator's definitions are invalid, no exemption exists under Section 13 (a) (10), because it was necessary for him to define the phrase before the exemption could be claimed.

In either event, the petitioners are entitled to affirmance of the judgment entered by the District Judge in their favor.

Respectfully submitted,

GEORGE PALMER GARRETT,
As Counsel for Petitioners.